

Title 4: JUDICIARY
Chapter 7: PROBATE COURT

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Maine Revised Statutes
Title 4: JUDICIARY
Chapter 7: PROBATE COURT

Subchapter 1: GENERAL PROVISIONS

§201. COURTS OF RECORD; SEAL; PUNISHMENT FOR CONTEMPT

Courts of probate are courts of record. Each shall have an official seal, of which the register shall have the custody. They may issue any process necessary for the discharge of their official duties and punish for contempt of their authority.

§202. OATHS AND ACKNOWLEDGMENTS

All oaths required to be taken by personal representatives, trustees, guardians, conservators, or of any other persons in relation to any proceeding in the probate court, or to perpetuate the evidence of the publication of any order of notice, may be administered by the judge or register of probate or any notary public. A certificate thereof, when taken out of court, shall be returned into the registry of probate and there filed. When any person of whom such oath is required, including any parent acknowledging consent to an adoption, resides temporarily or permanently without the State, the oath or acknowledgment may be taken before and be certified by a notary public without the State, a commissioner for the State of Maine or a United States Consul. [1981, c. 456, Pt. A, §5 (AMD).]

SECTION HISTORY

1979, c. 540, §6 (AMD). 1981, c. 456, §A5 (AMD).

§203. RIGHTS OF CLAIMANTS UNDER HEIR

Any person claiming under an heir at law has the same rights as the heir in all proceedings in probate courts, including rights of appeal.

Subchapter 2: JURISDICTION

§251. GENERAL JURISDICTION

Each judge may take the probate of wills and grant letters testamentary or of administration on the estates of all deceased persons who, at the time of their death, were inhabitants or residents of his county or who, not being residents of the State, died leaving estate to be administered in his county, or whose estate is afterwards found therein; and has jurisdiction of all matters relating to the settlement of such estates. He may grant leave to adopt children, change the names of persons, appoint guardians for minors and others according to law, and has jurisdiction as to persons under guardianship, and as to whatever else is conferred on him by law.

§252. EQUITY JURISDICTION

The courts of probate shall have jurisdiction in equity, concurrent with the Superior Court, of all cases and matters relating to the administration of the estates of deceased persons, to wills and to trusts which are created by will or other written instrument. Such jurisdiction may be exercised upon complaint according to the usual course of proceedings in civil actions in which equitable relief is sought.

§253. JURISDICTION IN COURT WHERE PROCEEDINGS ORIGINATE

Subject to Title 18-A, sections 1-303 and 3-201, and except as otherwise provided in Title 18-A, sections 5-211 and 5-313, when a case is originally within the jurisdiction of the probate court in 2 or more counties, the one which first commences proceedings therein retains the same exclusively throughout. The jurisdiction

assumed in any case, except in cases of fraud, so far as it depends on the residence of any person or the locality or amount of property, shall not be contested in any proceeding whatever, except on an appeal or removal from the probate court in the original case or when the want of jurisdiction appears on the same record. [1979, c. 540, §7 (AMD).]

SECTION HISTORY

1979, c. 540, §7 (AMD).

Subchapter 3: JUDGES

§301. TERMS; VACANCIES; SALARY

Judges of probate are elected or appointed as provided in the Constitution of Maine. Only attorneys at law admitted to the general practice of law in this State and resident in this State may be elected or appointed as judges of probate. Their election is effected and determined as is provided respecting county commissioners; and they enter upon the discharge of their duties on the first day of January following their election; but, when appointed to fill vacancies, their terms commence on their appointment. Vacancies caused by death, resignation, removal from the county, permanent incapacity as defined in Title 30-A, section 1, subsection 2-A or any other reason must be filled as provided in the Constitution of Maine. In the case of a vacancy in the term of a judge of probate who was nominated by primary election before the general election, the judge of probate appointed by the Governor to fill the vacancy until a successor is chosen at election must be enrolled in the same political party as the judge of probate whose term is vacant. In making the appointment, the Governor shall choose from any recommendations submitted to the Governor by the county committee of the political party from which the appointment is to be made. [1995, c. 683, §1 (AMD).]

Judges of probate in the several counties are entitled to receive annual salaries as set forth in Title 30-A, section 2. [1995, c. 245, §1 (AMD).]

The fees to which judges of probate are entitled by law must be taxed and collected and paid over by the registers of probate to the county treasurers by the 15th day of every month following the month in which they were collected for the use of their counties with the exception of the fees provided in section 304, which must be retained by the judge who collects those fees in addition to the judge's salary. [1995, c. 245, §1 (AMD).]

SECTION HISTORY

1981, c. 40, §1 (AMD). 1987, c. 737, §§C3,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1995, c. 245, §1 (AMD). 1995, c. 683, §1 (AMD).

§302. OFFICERS EXECUTE PROCESSES AND ATTEND COURTS

Sheriffs, their deputies and constables shall execute all legal processes directed to them by any such judge of probate who may, when necessary, require such officer, when not in attendance upon any other court, to attend during the sitting of the probate court, for which he shall be paid as in other courts for similar services.

§303. CONTINUOUS SESSION; RETURN DAY FOR MATTERS REQUIRING PUBLIC NOTICE

Probate court shall always be open in each county for all matters over which it has jurisdiction, except upon days on which by law no court is held, but it shall have certain fixed days and places to be made known by public notification thereof in their respective counties to which all matters requiring public notice shall be

made returnable, except as otherwise ordered by the judge. In case of the absence of the judge or vacancy in the office at the time of holding any court, the register or acting register may adjourn the same until the judge can attend or some other probate judge can be notified and attend. [1965, c. 238, (AMD).]

SECTION HISTORY

1965, c. 238, (AMD).

§304. EQUITY AND CONTESTED CASES; TIME AND PLACE OF HEARING

Judges of probate may hold hearings for matters in equity and contested cases at such time and place in the county as the judge of probate may appoint and make all necessary orders and decrees relating thereto, and when hearings are held at other places than those fixed for holding the regular terms of court, the judge shall be allowed, in addition to his regular salary, \$5 per day and actual expenses which shall be paid by the State unless otherwise provided by law.

§305. TERM OF FORT KENT AND CARIBOU PROBATE COURT

The judge of probate in and for the County of Aroostook shall hold a court of probate at least twice in each year at Fort Kent and at least 4 times each year at Caribou in the county. The time for holding the court shall be appointed by the judge and made known by public notification as provided in section 303. [1979, c. 41, (RPR).]

SECTION HISTORY

1979, c. 41, (RPR).

§306. INTERCHANGE OF JUDICIAL DUTIES; EXPENSES

During the sickness, absence from the State or inability of any judge of probate to hold the regular terms of his court, such terms, at his request or that of the register of the county, may be held by the judge of any other county. The judges may interchange service or perform each others' duties when they find it necessary or convenient, and in case of a vacancy in the office of a judge, all necessary terms of the probate court for the county may, at the request of the register, be held by the judge of another county until the vacancy is filled. The orders, decrees and decisions of the judge holding such terms have the same force and validity as if made by the judge of the county in which such terms are held.

When any judge of probate holds court or a hearing in any probate matter, or in equity, in any county other than the one in which he resides, such judge shall be reimbursed by the county in which such court or hearing is held for his expenses actually and reasonably incurred, upon presentation to the county commissioners of said county of a detailed statement of such expenses. [1965, c. 513, §5-A (AMD).]

SECTION HISTORY

1965, c. 513, §§5-A (AMD).

§307. CONFLICT OF INTEREST; TRANSFER OF CASE

When a judge or register of probate is interested in his own right, trust, or in any other manner, or is within the degree of kindred, by which in law he may, by possibility, be heir to any part of the estate of the person deceased, or is named as executor, trustee or guardian of minor children in the will of any deceased resident of the county, such estate shall be settled in the probate court of any adjoining county, which shall have as full jurisdiction thereof as if the deceased had died therein. If his interest arises after jurisdiction of such estate has been regularly assumed or existed at the time of his appointment to office, and in all cases where an executor, administrator, guardian or trustee, whose trust is not fully executed, becomes judge or register of probate for the county in which his letters were granted, further proceedings therein shall be transferred to the probate court in any adjoining county and there remain till completed, as if such court had had original jurisdiction thereof, unless said disability is removed before that time. Whenever in any case

within this section the disability of the judge or register is removed before the proceedings have been fully completed, the proceedings shall then be transferred to the probate court in the county of original jurisdiction or to the probate court which otherwise would have had jurisdiction. In all such cases the register in such adjoining county shall transmit copies of all records relating to such estate to the probate office of the county where such estate belongs, to be there recorded.

Nothing in this section shall be deemed to require removal to another county by reason of the judge or register of probate having been named as executor, trustee or guardian of minor children in a will, provided he receives no benefit from the will and the record of the court discloses the filing of his declination to act as such executor, trustee or guardian, if no objection is raised by any interested party at the hearing on the petition for probate of the will.

A judge is considered to be interested in an estate or other probate proceeding, including adoptions, if the judge or a person with whom the judge practices law represents a party in the proceeding. When such representation begins, the judge shall transfer the matter as provided in this section, after which transfer the judge or the person with whom the judge practices law may continue such representation, except that, after a formal probate proceeding has been initiated before a judge, that judge is forever barred from assuming representation of a party in that same proceeding without regard to whether or not the proceeding has been transferred. A petition requesting a transfer and the petition related to the matter being transferred filed simultaneously are not considered formal probate proceedings for the purposes of this paragraph. [1991, c. 697, §1 (NEW).]

SECTION HISTORY

1991, c. 697, §1 (AMD).

§308. CERTIFICATION OF UNFINISHED ACTS OF PREDECESSOR JUDGE

Every judge, upon entering on the duties of his office, shall examine the records, decrees, certificates and all proceedings connected therewith which his predecessor left unsigned or unauthenticated. If he finds them correct, he shall sign and authenticate them and they shall then be as valid to all intents and purposes as if such duty had been done by his predecessor while in office.

§309. JUDGE NOT TO COUNSEL OR DRAFT DOCUMENTS

No judge of probate shall have a voice in judging and determining nor be attorney or counselor in or out of court in any civil action or matter which depends on or relates to any sentence or decree made by him in his office, nor in any civil action for or against any executor, administrator, guardian or trustee under any last will and testament, as such, within his county. Any process or proceeding commenced by him in the probate court for his county in violation of this section is void, and he is liable to the party injured in damages. No judge of probate shall draft or aid in drafting any document or paper which he is by law required to pass upon.

§310. PERPETUAL CARE OF CEMETERY LOTS BY ORDER

Judges of probate, in any case in which an estate is under their jurisdiction for probate, shall have the power to order that an appropriate amount out of the estate be set aside for perpetual care and suitable memorials for the cemetery lot in which the deceased is buried, and to order special care of such lots when the conditions and size of the estate seem to warrant such order.

§311. CONTRACTS FOR SUPPORT

All contracts for support for life shall be approved by the Probate Court in the county in which the support for life is to be rendered. The Probate Court shall grant approval after such reasonable notice as the court shall determine to be appropriate, if the court shall find, after hearing, that the contract is just and equitable under all of the circumstances. [1969, c. 434, (NEW).]

A contract or agreement for support for life without such Probate Court approval shall not be received in evidence unless the person offering the contract or agreement shall establish by a preponderance of the evidence that the contract or agreement is just and equitable under all of the circumstances. [1969, c. 434, (NEW).]

This section shall not apply to such contracts or agreements between persons related within the 3rd degree. [1969, c. 434, (NEW).]

SECTION HISTORY

1969, c. 434, (NEW).

§312. POLITICAL ACTIVITIES OF JUDGES OF PROBATE

As a candidate for the elective office of judge of probate or as an elected judge, a person seeking or holding the office of judge of probate may engage in any political activity that would be lawful for a candidate for any other elected county office or for an incumbent elected county official. Any such judge may hold any other elected office or offices not made incompatible by the Constitution of Maine. [1993, c. 695, §1 (NEW).]

SECTION HISTORY

1993, c. 695, §1 (NEW).

Subchapter 4: RULES OF PRACTICE

§351. PROCEDURAL RULES; BLANKS; REVISION; APPROVAL (REPEALED)

SECTION HISTORY

1971, c. 94, §§1,2 (AMD). 1979, c. 540, §§7-A (RP).

§352. BLANKS AND RECORDS PROVIDED

Each county shall provide all necessary printed blanks and record books for its probate courts and courts of insolvency, and said record books may be printed to correspond with the printed blanks.

Subchapter 5: APPEALS

§401. APPELLATE JURISDICTION; SPECIAL GUARDIANS; APPEAL TO LAW COURT (REPEALED)

SECTION HISTORY

1979, c. 540, §7-B (RP).

§402. BOND ON APPEAL; SERVICE OF REASONS FOR APPEAL (REPEALED)

SECTION HISTORY

1979, c. 540, §7-B (RP).

§403. ALLOWANCE OF APPEAL ACCIDENTALLY OMITTED (REPEALED)

SECTION HISTORY

1979, c. 540, §7-B (RP).

§404. FAILURE TO PROSECUTE APPEAL **(REPEALED)**

SECTION HISTORY

1979, c. 540, §7-B (RP).

§405. STAY OF PROCEEDINGS ON APPEAL **(REPEALED)**

SECTION HISTORY

1979, c. 540, §7-B (RP).

§406. HEARING ON APPEAL **(REPEALED)**

SECTION HISTORY

1973, c. 625, §11 (AMD). 1979, c. 540, §7-B (RP).

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